

Reference Number: 167-01-DD

Title of Document: Appeal Procedure For Facilities Licensed or Certified by DDSN

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Applicability: All Programs Licensed or Certified by DDSN

PURPOSE:

The purpose of this document is to establish procedures for the appeal of adverse decisions concerning the denial, suspension or revocation of a license by the South Carolina Department of Disabilities and Special Needs (DDSN). Authority for this procedure for licensed facilities is set out in S.C. Code Ann. § 44-20-710, et seq. (Supp.2014). It is the policy of DDSN that each appellant be afforded a full and fair hearing within DDSN in accordance with S.C. Code Ann. § 1-23-310, et seq. (Supp.2014).

APPEAL PROCEDURE:

1. Where DDSN has denied, revoked, or suspended a license or certificate to operate a facility or program in accordance with 26 S.C. Code Ann. Regs. § 88-125 (Supp. 2012), the operator, owner, or governing body of the facility, if it desires to appeal the action, must give written notice of its intent to appeal within ten (10) calendar days from the date the notice of the adverse action was mailed. The facility's **or program's** notice of appeal must be addressed to the Director of Quality Management. The notice of appeal should set out in clear and concise terms the basis for the appeal and the relief sought. Any statements, letters, or correspondence which supports the appeal should be attached. The notice should also state whether a hearing is requested.

2. The Director of Quality Management, upon receipt of the appeal, shall immediately cause to be assembled an appeal package consisting of all relevant correspondence, statements, documents, and the facility's **or program's** appeal. The Director of Quality Management shall forward the appeal package to DDSN's General Counsel.

PARTIES

1. The Director of Quality Management shall be considered the respondent during the appeal. However, the Director of Quality Management may appoint a representative or be represented by an attorney for the purpose of presenting the division's position. In order to present an orderly presentation of evidence, the respondent shall present its position first before the examiners.
2. The facility operator, owner, or the governing board of the facility **or program** shall be considered the appellant and may be represented by a representative or an attorney.
- ~~3. DDSN, through the State Director, shall designate three (3) impartial examiners who may or may not be employees of the Department, but, in any event, shall not be employed by DDSN's Quality Management Division. One examiner shall be designated as the chairperson for the contested case. The examiners will hear the contested case and issue a recommendation to the State Director.~~

~~DDSN's General Counsel will give written notice of the place, time and date, the nature of the hearing and the authority governing the matters in issue. The notice shall be given at least 30 calendar days prior to the hearing. A copy of the appeal package will be made available to the appellant and the appeal examiners prior to the hearing. Generally, all hearings will be conducted at DDSN's Central Office. Where a hearing is not requested, General Counsel shall present the appeal and the Director of Quality Management's action to the State Director for a final decision. The appellant will be given the opportunity to offer any additional written argument to the State Director before final decision.~~

HEARING

- ~~1. DDSN's General Counsel will give written notice of the place, time and date, the nature of the hearing and the authority governing the matters in issue. The notice shall be given at least 30 calendar days prior to the hearing. A copy of the appeal package will be made available to the appellant and the appeal examiners prior to the hearing. Generally, all hearings will be conducted at DDSN's Central Office. Where a hearing is not requested, General Counsel shall present the appeal and the Director of Quality Management's action to the State Director for a final decision. The appellant will be given the opportunity to offer any additional written argument to the State Director before final decision.~~
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the contested case. The examiners will hear the contested case and issue a recommendation to the State Director.

2. At the hearing, the appellant will be given the opportunity to present any witnesses, documents, or other matters bearing on the issue of the adverse action. The appellant may submit oral or written arguments in support of its position. The Director of Quality Management or her representative may likewise present additional evidence or arguments in the same manner as the appellant. The responsibility for the presentation of any documents or the attendance of any witness shall rest with the party presenting that evidence. The hearing and evidentiary matters will be governed by the provisions of S.C. Code Ann. § 1-23-310 (Supp. 2014).
3. DDSN's General Counsel shall be responsible for scheduling the hearing, providing appropriate notice to all parties, and for other matters including establishing and maintaining the record in the case. The ~~General Counsel~~ Hearing Officer shall be present at the hearing and shall rule on all legal matters, particularly those of a procedural or evidentiary nature. ~~General Counsel~~ The Hearing Officer shall not; however, participate in the decision process with the examiners concerning the contested adverse action. General Counsel shall not represent the Division of Quality Management before the hearing. ~~The General Counsel shall advise the State Director as requested.~~

AGENCY DECISION

1. Within five (5) business days after hearing the contested case, the examiners will issue a written ~~recommendation~~ decision reciting pertinent facts, applicable laws or regulations, and conclusions. The ~~recommendation~~ decision will be forwarded to the State Director for review. A copy of the ~~recommendation~~ decision will be sent to the appellant and respondent.
2. The appellant and respondent may, within the ten (10) calendar days of the mailing of the ~~recommendation~~ decision, forward a letter to the State Director citing any exceptions to the decision and/or presenting argument for their position. No new evidence will be received by the State Director after the hearing, unless it is clearly relevant to the issues involved, was not otherwise available for the hearing, and shown that its exclusion would be fundamentally unfair.
3. Unless emergency action has been taken by the Director of Quality Management to issue a summary suspension, all adverse actions shall become final after ten (10) calendar days from the mailing of the notice of adverse action, except in those cases where a timely appeal has been initiated by the facility operator. In those cases where a proper appeal has been initiated, a final decision for DDSN shall be issued within 30 days by the State Director in writing at the conclusion of consideration of the examiners' ~~recommendation~~ decision and further argument, if any.
4. Time limitations specified herein must be adhered to unless, for good cause shown, a waiver is granted by the State Director.

5. Any further appeal of DDSN's final decision must be filed within a court of competent jurisdiction within 30 calendar days of the Department's final decision. Such appeals will be made from the record in accordance with S.C. Code Ann. § 1-23-310 et seq. (Supp. 2014).

EMERGENCY ACTION

If the Director of Quality Management finds that the public or individual health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the order of suspension, revocation, or denial of a license, then summary suspension of a license may be ordered pending proceedings for revocation or other adverse action. The proceedings shall be promptly instituted and determined. The time limits may be waived to expedite a prompt decision.

Susan Kreh Beck
Associate State Director-Policy
(Originator)

Beverly A.H. Buscemi, Ph.D.
State Director
(Approved)